

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JONATHAN RODRIGUEZ,

Movant,

-v-

UNITED STATES OF AMERICA,

Respondent.

15 Cr. 445 (PAE)

20 Civ. 5751 (PAE)

ORDER

PAUL A. ENGELMAYER, District Judge:

The Court, having concluded that the motion brought under 28 U.S.C. § 2255, *see* Dkt. 1, should not be summarily denied as being without merit, hereby orders that the U.S. Attorney's Office shall file a response to the § 2255 motion by **August 12, 2020**. Absent further order, the § 2255 motion will be considered fully submitted as of that date.


Mr. Rodriguez has also filed a motion for the appointment of counsel. Dkt. 3. There is no constitutional right to counsel in a proceeding brought under § 2255. The Criminal Justice Act ("CJA") provides that a court may appoint counsel to an indigent person in a § 2255 proceeding when "the interests of justice so require." 18 U.S.C. § 3006A(a)(2)(B). In deciding whether to exercise its discretion to appoint counsel under the CJA, courts in this circuit consider the same factors as those applicable to requests for pro bono counsel made by civil litigants. *See e.g.*, *Zimmerman v. Burge*, 492 F. Supp. 2d 170, 176 n.1 (E.D.N.Y. 2007); *In re Pizzuti*, ECF 10 Civ. 199, 2010 WL 4968244 (RJH) (HBP), at *1 (S.D.N.Y. Dec. 7, 2010). Those factors include the likelihood of success on the merits, the complexity of the legal issues, and the movant's ability to investigate and present the case. *See Cooper v. A. Sargenti Co.*, 877 F.2d 170, 172 (2d Cir. 1989); *Hodge v. Police Officers*, 802 F.2d 58, 61-62 (2d Cir. 1986).

The Court has considered those factors and finds that the appointment of counsel is not warranted at this time. Accordingly, the motion for the appointment of counsel is denied without prejudice. Dkt. 3. Following receipt of the Government's response, the Court will determine whether there is good reason to appoint counsel for Mr. Rodriguez.

The Clerk of Court is respectfully directed to notify the Criminal Division of the U.S. Attorney's Office for the Southern District of New York that this order has been issued.

All further papers filed or submitted for filing must include the criminal docket number and will be docketed in the criminal case.

SO ORDERED.


Paul A. Engelmayer
United States District Judge

Dated: July 29, 2020
New York, New York